



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 12, 1992

Mr. Daniel J. Eden  
Interim Executive Director  
Texas Water Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR92-94

Dear Mr. Eden:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14906.

You have received a request for information relating to a pending investigation of Precise Hard Chrome of McLennan County. Specifically, the requestor seeks:

- 1) The names of those persons who provided signed sworn statements concerning the removal and disposal of concrete rubble from Precise Hard Chrome.
- 2) A copy of those statements.

You claim that the requested information is excepted from required public disclosure by sections 3(a)(1) and 3(a)(3) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You claim that the requested information is excepted from required public disclosure by the informer's privilege, as incorporated into the Open Records Act by section 3(a)(1). Open Records Decision No. 549 (1990) at 4-5. The informer's privilege applies when a person reports violations of the law to officials having a duty to enforce the law. Open Records Decision No. 515 (1988) at 2. The informer's privilege serves to encourage the flow of information to the government by

protecting the identity of the informer. *Id.* If the contents of the informer's statement would tend to reveal the identity of the informer, the privilege protects the statement itself to the extent necessary to preserve the informer's anonymity. *Id.* The basis for the informer's privilege is to protect informers from the fear of retaliation and thus encourage them to cooperate with law enforcement efforts. *Id.* The informer's privilege under section 3(a)(1) is applicable not only to law enforcement agencies, but also to "administrative officials having a duty of inspection or of law enforcement within their particular spheres". Open Records Decision No. 279 (1981) at 2 (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961) and cases cited therein); *see also* Attorney General Opinion MW-575 (1982) at 2.

The affidavits for which you claim exception under the section 3(a)(1) informer's privilege relate, in part, to alleged pollution resulting from improper storage of chromium in certain storage tanks. The Texas Water Commission is charged with general authority to regulate the quality of water in Texas. Water Code § 26.011.<sup>1</sup> Section 26.2121 of the Water Code makes it an offense to pollute water and provides in part:

(a) A person commits an offense if the person, acting intentionally or knowingly with respect to the person's conduct, discharges or permits the discharge of a waste or pollutant into or adjacent to water in the state that causes or threatens to cause water pollution . . . .

The affidavits submitted to us for review clearly document complaints revealing possible violations of the law. You advise us that the affidavits were voluntarily submitted absent any solicitation and that the names of the informers and the nature of the complaints are not known to anyone who might have reason to resent the informers' communications. Accordingly, the names of the informers may be withheld. Because release of the remaining information would tend to reveal the identity of the informers, we conclude that the affidavits may be withheld


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<sup>1</sup>The Texas Water Commission becomes the Texas Natural Resource Conservation Commission on September 1, 1993. Until that time, the Texas Water Commission retains its name, powers, and duties notwithstanding any reference to the Texas Natural Resource Conservation Commission in the governing statutes. Acts 1991, 72d Leg., 1st C.S., ch. 3, §§ 1.085, 1.091.

from required public disclosure in their entirety. As we resolve this matter under section 3(a)(1), we need not address the applicability of section 3(a)(3) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-94.

Yours very truly,

A handwritten signature in cursive script, reading "Mary R. Crouter".

Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/GK/mc

Ref.: ID# 14906

cc: Mr. Brian Blansett  
City Editor  
Waco Tribune-Herald  
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